

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

KATHY NADINE SHAFF,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

3:12-cv-0206-LRH-VPC

ORDER

Before the court is defendant the United States of America's ("United States") motion to dismiss second amended complaint. Doc. #42.<sup>1</sup> Pro se plaintiff Kathy Nadine Shaff ("Shaff") filed an opposition (Doc. #44) to which the United States replied (Doc. #45).

**I. Facts and Background**

Plaintiff Shaff, a veteran, filed suit against the United States alleging that she received negligent medical treatment at the Veteran's Administration Medical Center in Reno, Nevada. *See* Doc. #1. In response, the United States filed a motion to dismiss arguing that Shaff failed to provide an affidavit from a medical expert supporting her allegations as required by NRS 41A.071. *See* Doc. #6. The court agreed, but because Shaff contended that it was her intent to file a civil rights complaint - and not a medical negligence complaint - the court granted her leave to file an

<sup>1</sup> Refers to the court's docket entry number.

1 amended complaint. *See* Doc. #17.

2 On August 14, 2012, Shaff filed an amended civil rights complaint. Doc. #18. In response,  
3 the United States filed a renewed motion to dismiss arguing Shaff failed to allege any actual claims  
4 against the United States. Doc. #19. The court agreed, but granted Shaff leave to file a final  
5 amended complaint “alleging specific causes of action that identify what civil right, if any, was  
6 violated and what federal statute supports that cause of action.” Doc. #23.

7 Subsequently, on July 8, 2013, Shaff filed her second amended complaint. Doc. #41.  
8 Thereafter, the United States filed the present motion to dismiss. Doc. #42.

## 9 **II. Legal Standard**

10 Defendant the United States seeks dismissal pursuant to Federal Rule of Civil Procedure  
11 12(b)(6) for failure to state a claim upon which relief can be granted. To survive a motion to  
12 dismiss for failure to state a claim, a complaint must satisfy the Federal Rule of Civil Procedure  
13 8(a)(2) notice pleading standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,  
14 1103 (9th Cir. 2008). That is, a complaint must contain “a short and plain statement of the claim  
15 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading  
16 standard does not require detailed factual allegations; however, a pleading that offers “‘labels and  
17 conclusions’ or ‘a formulaic recitation of the elements of a cause of action’” will not suffice.  
18 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
19 544, 555 (2007)).

20 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,  
21 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 1949 (quoting  
22 *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual content allows  
23 the court to draw the reasonable inference, based on the court’s judicial experience and common  
24 sense, that the defendant is liable for the misconduct alleged. *See id.* at 1949-50. “The plausibility  
25 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a  
26

1 defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a  
2 defendant's liability, it stops short of the line between possibility and plausibility of entitlement to  
3 relief." *Id.* at 1949 (internal quotation marks and citation omitted).

4 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as  
5 true. *Id.* However, "bare assertions . . . amount[ing] to nothing more than a formulaic recitation of  
6 the elements of a . . . claim . . . are not entitled to an assumption of truth." *Moss v. U.S. Secret*  
7 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 129 S. Ct. at 1951) (brackets in original)  
8 (internal quotation marks omitted). The court discounts these allegations because "they do nothing  
9 more than state a legal conclusion—even if that conclusion is cast in the form of a factual  
10 allegation." *Id.* (citing *Iqbal*, 129 S. Ct. at 1951.) "In sum, for a complaint to survive a motion to  
11 dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be  
12 plausibly suggestive of a claim entitling the plaintiff to relief." *Id.*

### 13 **III. Discussion**

14 In her second amended complaint, Shaff seeks monetary damages against the United States  
15 pursuant to claims brought under Section 504 of the Rehabilitation Act of 1973, the Americans  
16 with Disabilities Act ("ADA"), and the Civil Rights Act of 1991. *See* Doc. #41.

17 In its motion to dismiss, the United States argues that monetary damages are not an  
18 available remedy against the United States under either the Rehabilitation Act or the ADA. *See*  
19 Doc. #42. Further, the United States argues that Shaff is not covered by the Civil Rights Act of  
20 1991. *Id.* The court agrees.

21 Shaff's second amended complaint fails to state a claim as a matter of law as the statutes  
22 identified by Shaff do not allow an award of monetary damages against the United States. In *Lane*  
23 *v. Pena*, 518 U.S. 187 (1996), the United States Supreme Court specifically held that in enacting  
24 the Rehabilitation Act, Congress did not waive the federal government's sovereign immunity from  
25 monetary damages. 518 U.S. at 192. Similarly, the United States has not waived its sovereign  
26

1 immunity under the ADA as the remedies provision under Section 203 of the ADA is the same as  
2 Section 505 of the Rehabilitation Act. *See* 42 U.S.C. § 12132. Thus, Shaff has failed to allege a  
3 claim under these statutes upon which relief can be granted.

4 As to her claim under the Civil Rights Act of 1991, Shaff's complain similarly fails to state  
5 a claim upon which relief can be granted. The Civil Rights Act of 1991 was enacted to amend the  
6 Civil Rights Act of 1964 to strengthen civil rights laws that ban discrimination in the *employment*  
7 context. Shaff is not, nor has she ever been, an employee of the Veteran's Administration. As such,  
8 the auspices of the Civil Right Act of 1991 do not provide her a claim for relief against the United  
9 States. Therefore, the court shall grant the United States' motion and dismiss Shaff's second  
10 amended complaint in its entirety.

11  
12 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #42) is  
13 GRANTED. Plaintiff's second amended complaint (Doc. #41) is DISMISSED in its entirety.

14 DATED this 18th day of October, 2013.

15  
16 

17 LARRY R. HICKS  
18 UNITED STATES DISTRICT JUDGE  
19  
20  
21  
22  
23  
24  
25  
26